N THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual Defendants	)	No. 2:00-CV-2041-AJS

AFFIDAVIT OF ERIC PARKINSON IN SUPPORT OF REQUEST FOR RELIEF UNDER FED. R. CIV. P. 60

1. My name is Eric Parkinson and my current business address is 1722 N. College C-303, Fayetteville, AR 72703.

2. I am making this Affidavit based upon my own personal knowledge of the facts set forth herein and in support of the Motion for Relief under Fed R. Civ. P. 60 that has been filed on behalf of Defendant Charles Von Bernuth.

3. I am a defendant in this action also and had been represented by Attorney John W. Gibson, the same counsel who represented Mr. Von Bernuth.

4. I have seen the Affidavit provided to Mr. von Bernuth's counsel by Attorney Gibson concerning his dereliction in this case. I have also been victimized by his failure to defend my interests in this case.

5. I understand that a judgment has been entered against me in an amount in excess of $2.5 million. This is an amount which in no way accurately reflects any liability I should have to Plaintiff WRS, Inc. ("WRS"), whether under any guarantee document or otherwise.

6. I understand from Mr. von Bernuth's counsel that to obtain relief from the judgment at this procedural stage requires a demonstration that the defendants have meritorious defenses to WRS' claim. This Affidavit spells out facts of which I have personal knowledge showing that Plaza Entertainment, Inc. ("Plaza") as well as all of the other defendants do have meritorious defenses to WRS' claim.

7. Indeed, as will be demonstrated by the facts set forth in this Affidavit and the documentary evidence attached hereto, the defendants are not liable to WRS because (a) WRS completely breached the October 12, 1998 Services Agreement by failing to fulfill its obligations thereunder and (b) WRS' account records on which the judgments against the defendants are based are unreliable and wrong.

8. WRS has never accounted to Plaza or given credit to its account with money derived from Plaza's accounts receivable and inventory which were in WRS's exclusive control, the value of which were more than sufficient to pay WRS in full.

9. Based on the testimony and information I can supply, I believe that contrary to the representation that Plaza owed WRS their claim of a principal amount in excess of $1.2 million (which amount was doubled to $2.5 million through the addition of many years of interest) that Plaza is, in fact, owed significant amounts by WRS.

Background of Plaza Entertainment

10. I formed Plaza in 1996 with financial assistance from Gordon Granger to execute a business plan which I had developed to market family films and videos to retailers in North America. In October of 1997, Granger sold his 50% shareholder stake in Plaza to Defendant John Herklotz, who assumed the position and duties as Chairman and C.O.O. of Plaza.

11. One of Mr. Herklotz's primary reasons for purchasing a 50% stake in Plaza was to create a distribution mechanism for the release of a film owned by Herklotz entitled "The Giant of Thunder Mountain." On or about January, 1998, Herklotz sold or otherwise assigned a small portion of his shares in Plaza to co-Defendant Charles von Bernuth, a business colleague of Herklotz, and von Bernuth subsequently commenced full-time employment at Plaza in a management capacity.

12. Plaza's original agreement with WRS for duplication services dates back to 1996 and a copy is attached hereto as Exhibit "A".

13. Among other things, WRS agreed as part of this contract that it would discount the first $300,000 of purchases by Plaza by one-half; providing Plaza with a $150,000 credit.

14. In 1998, The Giant of Thunder Mountain, which had been re-released theatrically some years earlier to poor box office results, was ready to be aggressively marketed to the home video market by Plaza. Distribution was planned through Wal-Mart stores and other big box retailers.

15. A large quantity of videocassettes, approximately 200,000 units, was required to be produced by WRS to supply this marketing effort and in May of 1998 WRS requested and received a personal guaranty from Mr. Herklotz in connection with the provision of these services to Plaza on a credit basis.

16. As is customary in the video industry, Wal-Mart and most other distributors and retailers took delivery of The Giant of Thunder Mountain videocassettes on a consignment basis, meaning that unsold videocassettes could be freely returned and only cassettes actually sold to end customers were subject to payment to Plaza.

17. Approximately two-hundred-thousand (200,000) VHS videocassettes of The Giant of Thunder Mountain movie were produced by WRS in 1998 creating a large account payable owed by Plaza for these services.

18. Plaza and Herklotz were unable to finance a planned consumer campaign of television commercials designed to drive awareness for The Giant of Thunder Mountain and generate retail sell-thru of the videocassette units which had been shipped to stores nationally. Accordingly, net consumer sales of the videocassettes were not as good as anticipated and resulted in substantial product returns and a reduction in the accounts receivable for Plaza on that title. In addition to

The Giant of Thunder Mountain, Plaza also generated other accounts receivable from sales of approximately thirty other movie and video titles in its film library during 1998.

19. Due in large part to the product returns from unsold copies of The Giant of Thunder Mountain, Plaza was having difficulty in 1998 in managing its business and collecting on the accounts receivable in a timely manner. This created cash flow problems for Plaza and heightened the concerns of WRS as a creditor to Plaza.

20. Plaza was behind in payments to its vendors, including WRS.

21. Plaza needed help in administering its business activities and it entered into an agreement with WRS whereby WRS was to provide such services. That Services Agreement, which was attached as an Exhibit to the original Complaint in this matter, is also attached to this Affidavit as Exhibit "B".

WRS Breached the Services Agreement

22. The Services Agreement established a lock box into which all payments on Plaza account receivables would go. The lock box account was established at the National Bank of Canada, which was WRS's secured lender.

23. Initially, the terms of the lock box account required the authorization of both WRS and Plaza to obtain funds.

24. Under a formula established in the Services Agreement, Plaza was to receive either 50% or 70% of each payment received on its accounts receivable, depending on whether the payment was on a Plaza receivable predating the Services

Agreement or from a receivable generated after the Services Agreement. WRS was to receive the rest of the funds to be applied to reduce what Plaza owed it.

25. There were serious problems concerning WRS' performance under the Services Agreement virtually from the inception of the arrangement. This is evidenced by my November 19, 1998 letter to WRS' president, Jack Napor (Exhibit "C" hereto').

26. Based on what I observed, WRS proved to be worse at collecting the accounts receivable than Plaza had been.

27. In addition, Plaza received no accountings from WRS and frequently was told that "no collections" had been received. I have subsequently learned from several of Plaza's customers that payments were in fact being made on Plaza receivables in 1999 and 2000 from which Plaza received no share and which are not listed in the records of lockbox payments produced by WRS in discovery in this case. WRS has failed to provide any bank records for the Mellon Bank lock box account, established in June of 1999 to replace the original lock box account at National Bank of Canada. Plaza bank records do not show receipt of any lock box revenues from late 1999 or more recently, despite representations from key Plaza customers that payments were rendered to the WRS controlled Mellon lock box account during that timeframe.

28. An example of this is evidenced by the E-mail I received from Pat Andrews at Anderson Merchandisers (Exhibit D hereto) in which she sent records showing that her company made two payments on its account with Plaza, check No.

184621 dated 7-15-99 for $10,160.90 and check No. 187512 dated 9-22-99 for $11,673.00, neither of which is recorded on WRS's records which were used to support their request for judgment in this case. Plaza did not receive a share of these funds and did not receive credit against what it purportedly owed. Additional purchasers of Plaza products who report making payments during that timeframe which have not been recorded in the WRS reports include Baker & Taylor Video, Musicland Group and Major Video Concepts.

29. In the original lock box account arrangement Plaza had joint authority with WRS on the account and consequently we were able, during the initial months of operation under the Services Agreement, to obtain the payments to which Plaza was entitled.

30. In the spring of 1999, however, we received a direction from WRS that the lock box arrangement was being changed. WRS told us that the account as constituted was affecting their relationship with their secured lender and that a new account needed to be opened at another financial institution.

31. Ultimately, the new account was opened through Mellon Financial Services as demonstrated by memorandum of June 21, 1999 to my staff attached hereto as Exhibit E and a July 19, 1999 memo I sent to one of our customers, Major Video Concepts, directing payment to be made to the new lock box account, attached hereto as Exhibit F.

32. Significantly, the new lock box was under the complete control and direction of WRS.

33. Moreover, in approximately October of 1999, WRS' control over Plaza's business, including collection of receivables and maintenance of its inventory, became almost total. Two WRS employees, Joe Shields and Melanie Verlin, were sent to Los Angeles to gather all of Plaza's Accounts Receivable records and many other financial records and send them to WRS's offices in Pittsburgh.

34. Following the implementation of this new lock box and WRS's seizure of records, major problems began to occur for Plaza.

35. As of September 30 1999, Plaza had approximately $1,045,180.00 in net accounts receivable for collection as demonstrated by its contemporaneously maintained records (Exhibit G hereto). Furthermore, Plaza's accounts receivable had recently been reviewed by management to eliminate and write off bad or doubtful receivables.

36. Even though there were over $1,000,000 in receivables to be collected by WRS on Plaza's account, Plaza did not receive any further payment from WRS in connection with the collection of its receivables after the implementation of the new lock box arrangement.

37. Initially, WRS claimed that the reason for its failure to make any payment to Plaza was problems with WRS's computer system. My letter to Joe Gerek of WRS on December 20, 1999 (Exhibit H hereto) reflects my frustration at continually being told by WRS that Plaza receivables were not being collected and reflects that WRS blamed the situation on "problems" with its accounting system. As the letter also reflects, WRS's computer problems, whatever their nature, were also causing Plaza to

receive invoices from WRS for replication services that were not authorized or potentially were not actually occurring.

38. My letter reflects that these problems had been occurring and that Plaza had received no payments on account of the collection of its receivables for a period then approximating 2½ months.

39. On February 3, 2000 I again wrote to Joe Gerek and Joe Shields of WRS (Exhibit I hereto). That letter reflects that at least another 1½ months had gone by without Plaza receiving any payments from WRS in connection with collection of Plaza receivables. I complained that "the repeated news that there have not been receivables collected is putting Plaza out of business", and this was literally proving to be the case. Also, I again raised the issue of the invoices Plaza was receiving for replications made without a purchase order or authorization from Plaza, stating that WRS needed to fix the problems with its computer/accounting system to which WRS attributed the erroneous new invoices.

40. My February 18, 2000 letter to Joe Gerek (attached hereto as Exhibit J hereto) shows that WRS continued to make no payments to Plaza in connection with WRS's collection of more than $1 Million in receivables that had existed as of September 30, 1999. In that letter, I also stated that customers were reporting to me having sent payments to the Lock Box during this same period when WRS was reporting that no receivables had been collected. I indicated that WRS's unacceptable failure to pay Plaza its share of these payments, which had been made two weeks earlier, was not consistent with the Services Agreement.

41. I have reviewed Plaza's banking records and can find no evidence of receipt of any payments from WRS under the second lock box arrangement. Plaza also did not receive any accounting from WRS to know how much of Plaza's receivables were actually collected into that account and how these revenues had been posted by WRS to retire the Plaza video manufacturing balance.

42. As stated, I have communicated with several Plaza customers to confirm that they, in fact, were making payments on their accounts with Plaza during this time period. The payments went into the lock box account which was exclusively controlled by WRS but the payments never materialized into money for Plaza as was required under the Services Agreement.

WRS's Claim As To What It Was Owed Is Grossly Inflated

43. Even independently of the fact that Plaza did not receive proper credit for payments made on its receivables, WRS's allegation that it was owed approximately $1,250,000 by Plaza as of the time it filed this suit in October of 2000 is absurd.

44. The amount Plaza owed to WRS at the time of the Services Agreement was agreed to be $685,379.88 (at August 31, 1998), an amount confirmed by their own, independent auditors.

45. Most of the WRS invoices for new videocassette manufacturing services which purportedly occurred after August, 1998, also do not accurately reflect

the pricing agreement as attached to this Affidavit as Exhibit A. Not only are these invoices suspect, but they have been generated at inflated unit prices.

46. The entire intent of the Services Agreement was that this amount would be repaid as Plaza's receivables were collected and that ongoing business would be managed by WRS such that Plaza would incur additional charges for replication or other services only if there was a specific firm order that could generate more than sufficient funds to pay for such services. The only way that the amount Plaza owed WRS could have ***increased*** would be through the addition of interest.

47. Based on its contentions about what Plaza owes, my only conclusion can be that WRS either provided unnecessary services which were never authorized by Plaza and has billed for the same or WRS either deliberately or through computer error has simply created fictitious invoices for services that were never provided. Under the Services Agreement, if WRS were required to manufacture new videocassettes, this would be for the fulfillment of new sales orders. Therefore, the creation of new videocassettes at the WRS cost-of-goods pricing, would have been more than offset by the wholesale value of the new orders that these goods were being manufactured to fulfill. On average, the VHS videocassette cost-of-goods under the WRS pricing schedule was approximately $1.70 per unit, while the average wholesale pricing of Plaza videos was $7.48. Accordingly, each new sale would have generated a receivable more than four-times the value of the WRS new replication costs. If the WRS replication costs were increasing, the Plaza receivables would have increased four-fold based on the new sales reflected by the new video manufacturing.

48. In addition to failing to account for or pay Plaza for the Plaza receivables it collected, WRS also was holding substantial inventory that had been charged to Plaza, said inventory being held in the WRS warehouse in Pittsburgh, PA. In August of 1999, WRS reportedly was holding more than 100,000 units of VHS videocassettes that had been charged to Plaza, yet was withholding these units from Plaza's access. Attached as Exhibit K to this Affidavit is a listing of inventory that Plaza had arranged to be sold for a substantial close-out opportunity. The transaction could not be completed because WRS refused to release the inventory. Since Plaza was being charged for storing the inventory, Plaza should be granted access to sell it, especially if 50% of the revenues would be going to reduce Plaza's balance with WRS. But WRS nonetheless refused.

49. WRS has never returned this inventory to Plaza or gave Plaza any money or credit against what it was owed for sale of the inventory by WRS. I would conservatively value the amount of Plaza inventory in the possession of WRS as $200,000 based on the WRS "cost-of-goods" and billings to Plaza, with the potential wholesale value worth approximately $700,000 if Plaza had been granted access to sell off these items.

Conclusions Regarding the Meritorious Defenses to WRS' Claim

50. For reasons set forth more fully in this Affidavit, and based on the supporting documentation I have attached, it is clear that WRS was in breach of its obligations under the Services Agreement since at least mid-1999. Following its creation of the second lock box account, which was under WRS's sole control, and its

seizure of Plaza's records, Plaza never received payments as agreed under the Services Agreement, reports as agreed, or access to inventory for the generation of sales.

51. I have evidence that payments on Plaza accounts receivable were made which were never entered in the records WRS relied on to obtain its judgments and Plaza received neither money nor credit to its account in connection with these payments. In addition to the information concerning payments by Anderson Merchandisers related above, I believe that substantial payments were made by Major Video Concepts, Baker & Taylor Video, Video Product Distributors and Musicland Group. I am currently obtaining additional evidence of such payments. This will completely contradict Jack Napor's deposition testimony that no collection of Plaza receivables was ever made.

52. In addition, WRS' claim about what it was owed for services is hugely inflated. There is simply no way that amounts owed to WRS should have increased by a factor of nearly 2 in approximately 1½ years of operation under the Services Agreement, without a corresponding increase in the accounts receivable representing the wholesale value any such new sales would have generated.

53. As reflected in the attached correspondence, there were times when I considered declaring WRS in breach of its agreement with Plaza and filing suit against WRS to seek remedies.

54. Ultimately, WRS by far had the upper hand in its relationship with Plaza. Simply put, Plaza did not have the financial capability to even take action to

enforce its rights against WRS under the Services Agreement. We were totally at the mercy of WRS for any source of funds and WRS's breaches and failure to live up to its commitments to Plaza are what drove Plaza out of business.

55. WRS failed to report to Plaza and remit to Plaza its applicable share of revenues. WRS failed to obtain Plaza's permission to manufacture new videocassettes. WRS invoiced Plaza for the manufacturing of videocassettes that Plaza did not authorize, and billed for these services at inflated pricing. WRS failed to grant Plaza access to inventory for which Plaza had been charged, thus blocking Plaza from generating new cash which could have benefited both WRS and Plaza. The value of Plaza's receivables, much of which was collected but not reported by WRS, less the over-billing, unauthorized charges and the value of inventory add up to an amount in favor of Plaza which significantly exceeds the total owed to WRS.

56. Pursuant to 28 U.S.C. §1746 I hereby declare under penalty of perjury that the facts set forth in this Affidavit are true and correct based upon my personal knowledge thereof.

Executed on September 27, 2007.

Eric Parkinson